

## Chapter 29.02 - DEFINITIONS <sup>1</sup>

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### 29.02.010 Purpose

The purpose of this chapter is to provide specific meanings for terms as they are used in this title and to facilitate the understanding and administration of the provisions of this title. Meanings shall apply to the singular or plural and to any tense of a verb. Definitions of pertinent terms provided in Utah Code Annotated are adopted as part of this title.

### 29.02.020 Definitions

Unless the context requires otherwise, the following definitions shall be used in the interpretation and construction of this Title. Words used in the present tense include the future; the singular number shall include the plural, and the plural the singular; the word "building" shall include the word "structure"; the words "used" or "occupied" shall include arranged, designed, constructed, altered, converted, rented, leased, or intended to be used or occupied; the word "shall" is mandatory and not directory, and the word "may" is permissive; the word "person" includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual; the word "lot" includes the words plot, or parcel. Words used in this Title but not defined herein shall have the meaning as defined in any other title adopted by the local jurisdiction.

Accessory Use or Building. A use or building on the same lot with, and of a nature customarily incidental and subordinate to, the principle use or building.

Adult Day Care Facility. A facility that furnishes care, supervision and guidance for three (3) or more adults unaccompanied by a guardian for periods of less than twenty-four (24) hours per day.

Affected Entity. Means a county, municipality, independent special district under Title 17A, Chapter 2, Independent Special Districts, local district under Title 17B, Chapter 2, Local Districts, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, a property owner, a property owners association, or the Utah Department of Transportation, if:

1. The entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;
2. The entity has filed with the municipality a copy of the entity's general or long-range plan; or
3. The entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with a requirement imposed under this chapter.

Agent of Owner. Any person who can show written proof that he is acting for the property owner and with the property owner's knowledge and permission.

Agriculture. The production, keeping or maintenance, for sale, lease or personal use of plants and animals useful to man, including crops and products such as vegetables, fruit trees, harvestable and ornamental trees, hay, sod, grain, honey, milk, cheese, and any other agricultural or horticultural products and their storage; the raising thereon of farm poultry and farm livestock and animals, such as cattle, sheep, goats or animals of the Bovinae family; all horses, mules or animals of the Equine family; all pigs, swine or animals of the Suinae family; fur bearing animals, bees and ostriches, rhea, and emu, trees and forest products; wholesale fruits of all kinds, including grapes, nuts and berries; wholesale vegetables; wholesale nursery, floral, ornamental and greenhouse products; or lands devoted to a soil conservation or forestry management program.

Agricultural Industry or Business. An industry or business involving agricultural products in manufacturing, packaging, treatment, sales, intensive feeding, or storage, including but not limited to animal feed yards, fur farms, food packaging or processing plants, commercial poultry or egg production, and similar uses as determined by the planning commission.

Agricultural Sales And Services. Establishments primarily engaged in supplying machinery, equipment, supplies and services to agricultural producers.

Airport. Any area of land or water designed and set aside for the landing and the taking off of aircraft.

Alley. A public access-way less than twenty-six (26) feet in width, which is designed to give secondary access to lots or abutting properties; an alley shall not be considered a street, for the purposes of this Title.

Alterations, Structural. Any change in the supporting members of a building, such as bearing walls, columns, beams or girders.

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<sup>1</sup>Section 29-01 - 29-09 completely rewritten upon approval of Ordinance No. 07-13, dated 7/19/07

**Amusement Park.** Any place of organized amusement activity not conducted wholly within a completely enclosed building.

**Appeal Authority.** Means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application and a variance.

**Architectural Projection.** Any building or structural projection which is not intended for occupancy and which extends beyond the face of an exterior wall of a building or structure, but not including signs.

**Assisted Living Facility.** A residential facility, licensed by the State of Utah, with a homelike setting that provides an array of coordinated supportive personal and health care services, available twenty-four (24) hours per day, to residents who have been assessed under Utah Department of Health or Utah Department of Human Services rules to need any of these services. Each resident shall have a service plan based on the assessment, which may include:

- A. specified services of intermittent nursing care;
- B. administration of medication; or
- C. support services promoting resident's independence and self-sufficiency.
- D. An assisted living facility does not include:
  - 1. a residential facility for persons with a disability; or
  - 2. adult day care provided in conjunction with a residential facility for elderly persons or a residential facility for persons with a disability.

**Automatic Car Wash.** A facility for automatic or self-service washing and cleaning of automobiles and small trucks not exceeding one and one-half (1-1/2) tons capacity.

**Automobile Paint Shop.** A facility for painting of automobiles, trucks, trailers, boats, or other travel or recreation vehicles or units.

**Automobile Sales Area.** An open area used for display, sale, or rental of new or used motor vehicles, mobile homes, recreational coaches, or recreation vehicles in operable condition.

**Automobile Service Station.** A place where gasoline, or any other motor fuel or lubricating oil or grease for operating motor vehicles is offered for sale to the public and deliveries are made directly into motor vehicles, and where services performed may include tube and tire repair, battery charging, storage of merchandise, lubricating of automobiles, replacement of spark plugs, lights, fans, and other small parts, but not including major auto repair.

**Automobile Sales and Service.** The sales, repair and maintenance of automobiles and trucks. Such uses may include, but are not limited to, sales lots, body shops, transmission shops, lube centers, tire stores, car washes as a primary use, and auto glass shops, among other things. This definition does not include retail sales of auto parts and supplies where no service or repair is performed on the premises.

**Average Per Cent of Slope.** An expression of rise or fall in elevation along a line perpendicular to the contours of the land, connecting the highest point of land to the lowest point of land within an area or within a lot. A vertical rise of one hundred (100) feet between two points one hundred (100) feet apart, measured on a horizontal plane is a one hundred (100) percent slope.

**Awning.** A shelter projecting from and supported by the exterior wall of a building, constructed of nonrigid materials on a supporting framework.

**Basement.** A story whose floor is more than twelve (12) inches below the average level of the adjoining ground, but where no more than one-half (½) of its floor-to-ceiling heights is below the average contact level of the adjoining ground. A basement shall be counted as a story for purposes of height measurement, and as a half-story for the purpose of side-yard determination.

**Basement House.** A residential structure without a full story structure above grade.

**Bed and Breakfast Facility.** A dwelling meeting the requirements of Section 29.03.210, in which rooms are rented out by the day offering overnight lodgings to travelers and where one or more meals are provided by the host family, the price of which is included in the room rate

**Beginning of Construction.** The pouring of concrete footings for a building or structure.

**Block.** The land surrounded by streets or other rights-of-way, other than an alley, or land which is designed as a block on any recorded subdivision plat.

**Boarder.** A person living in a rented room in a boarding house. The boarding house operator, or a member of his or her immediate family who resides on the premises with the operator, shall not be deemed a boarder.

**Boarding House.** A building or portion thereof operated by a person residing on the premises where, for compensation, rooms are rented together with meals for not more than fifteen (15) boarders who generally do not directly utilize kitchen facilities. "Compensation" shall include money, services or any other thing of value. A boarding house does not include:

- A. a residential facility for the elderly or persons with a disability; or
- B. any non-residential facility, such as a rehabilitation/treatment facility, where the primary purpose of the facility is to deliver rehabilitation, treatment, counseling, medical, protective or other similar services to the occupants thereof.

Body and Fender Shop. A facility for major automobile, truck, mobile home, recreational coach or recreation vehicle repairs to body, frame, or fenders, and including rebuilding.

Buildable Area. The portion of a lot remaining after required yards have been provided, except that land with an average grade exceeding fifteen (15) per cent shall not be considered buildable area unless it is approved by conditional use permit for construction, after study by a geologist, soils engineer, or sanitarian as required by the planning commission.

Building. Any structure used or intended to be used for the shelter, or enclosure of persons, animals, or property.

Building, Accessory. A building which is subordinate to, and the use of which is incidental to, that of the main building or use on the same lot.

Building, Agricultural. A structure used solely in conjunction with agriculture use, not for human occupancy, and complying with the requirements of Utah Code Annotated section 58-56-4, as amended. To qualify as an agricultural building, the structure must be located outside of a residential area, as defined by Utah Code Annotated section 58-56-4(1), as amended.

Building, Height of. The vertical distance from the average finished grade surface to the highest point of the building roof or coping.

Campground. A public area designated by a public agency for camping, or a private area licensed by the local governing body for camping.

Camping. A temporary establishment of living facilities such as tents or recreational coaches as regulated by this Title.

Canopy. A roofed structure constructed of fabric or other material placed so as to extend outward from the building providing a protective shield for doors, windows and other openings supported by the building and supports extending to the ground directly under the canopy.

Carport. A private garage not completely enclosed by walls or doors. For the purposes of this Title, a carport shall be subject to all the regulations prescribed for a private garage.

Cattery. Land or buildings used in the keeping of three (3) or more cats, six (6) months old or older.

Cellar. A room or rooms wholly under the surface of the ground, or having more than fifty (50) per cent of its floor to ceiling height under the average level of the adjoining ground.

Child Nursery. An establishment for the care and/or the instruction of five (5) or more children, for compensation, other than for members of the family residing on the premises, but not including a public school.

Church. A building, together with its accessory buildings and uses, maintained and controlled by a duly-recognized religious organization where persons regularly assemble for worship.

City Attorney's Office. Means the attorney employed by or officially representing Brigham City, Utah

City Council. Means the City Council of Brigham City.

City Building Inspector. The building inspector employed by or officially representing Brigham City's Building Department.

City Engineer. The engineer employed by or officially representing Brigham City, Utah.

City Planner. The Planner employed by or officially representing Brigham City's Community Development Department.

Clinic, Dental or Medical. A building in which a group of dentists, physicians, and allied professional assistants are associated for the conduct of their professions. The clinic may include a dental and/or a medical laboratory and an apothecary, but it shall not include inpatient care or operating rooms for major surgery.

Club, Social. Any organization, group, or association supported by its members where the sole purpose is to render a service to said members and their guests.

Community Correctional Facility. A facility licensed by or contracted by the State of Utah to provide temporary occupancy for previously incarcerated persons which assists such persons in making a transition from a correctional institution environment to independent living. Such facility may also provide ancillary, temporary occupancy for individuals placed as part of, or in lieu of confinement, rehabilitation, or treatment in a correctional institution.

Commercial Sales and Services. Means any use involving the exchange, buying, or selling of goods or services for gain or economic profit, but excluding automobile repair.

Community Development Department. Means the Community Development Department of Brigham City, Utah.

Complete Application. A submission that includes all information requested on the appropriate form and payment of all applicable fees.

Correctional Facility. A prison, jail, juvenile detention facility or juvenile secure facility.

Concentrated Animal Feeding Operation. A lot or facility, as defined by the administrative rules of the state of Utah, R317-8-3.6, as amended, subject to the Utah pollutant discharge elimination system (UPDES), but generally where the following conditions are met:

A. Animals, other than aquatic animals, have been or will be stabled or confined and fed or maintained for a total of forty five (45) days or more in any twelve (12) month period; and

B. Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility; or

C. Is designated by the executive secretary, state of Utah water quality board, as a concentrated animal feeding operation:

D. Number Only: If more than the numbers of animals confined exceeds:

1. One thousand (1,000) slaughter and feeder cattle,
2. Seven hundred (700) mature dairy cattle, whether milked or dry cows,
3. Two thousand five hundred (2,500) swine,
4. Five hundred (500) horses,
5. Ten thousand (10,000) sheep or lambs,
6. Fifty five thousand (55,000) turkeys,
7. One hundred thousand (100,000) laying hens or broilers, if the facility has continuous overflow watering,
8. Thirty thousand (30,000) laying hens or broilers, if the facility has a liquid manure handling system,
9. Five thousand (5,000) ducks, or
10. One thousand (1,000) animal units.

E. Number And Condition Of Discharge: If more than the numbers of animals confined exceeds

1. Three hundred (300) slaughter and feeder cattle,
2. Two hundred (200) mature dairy cattle, whether milked or dry cows,
3. Seven hundred fifty (750) swine,
4. One hundred fifty (150) horses,
5. Three thousand (3,000) sheep or lambs,
6. Sixteen thousand five hundred (16,500) turkeys,
7. Thirty thousand (30,000) laying hens or broilers, if the facility has continuous overflow watering,
8. Nine thousand (9,000) laying hens or broilers, if the facility has a liquid manure handling system,
9. One thousand five hundred (1,500) ducks, or
10. Three hundred (300) animal units; and
11. Either one of the following conditions are met:
  - i. Pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or
  - ii. Pollutants are discharged directly into waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Conditional Use. A use of land for which a conditional use permit is required, pursuant to this Title.

Condominium. The ownership of a single unit in a multi-unit project together with an undivided interest in common in the common areas and facilities of the property.

Constitutional Taking. Final action(s) by the City to physically take or exact private real property that requires compensation to the owner because of the mandates of the fifth or fourteenth amendments to the constitution of the United States or of article 1, section 29, of the Utah constitution

Corral. A space, other than a building, less than one (1) acre in area, or less than one hundred (100) feet in width, used for the confinement of animals or fowl.

Court. An open, unoccupied space, other than a yard, on the same lot with a building or group of buildings, and which is bounded on two or more sides by such building or buildings.

Coverage, Building. The per cent of the total site area covered by buildings.

Crisis Nursery. A twenty-four (24) hour group living facility which provides crisis/respite care in a safe homelike atmosphere to a maximum of eight children ages 0 through 11 when there is a potential for abuse, neglect, or an emergency. Crisis care may include room and board for up to 72 hours. Each facility shall:

A. have an employed manager/house parent responsible for day-to-day resident supervision and operation of the facility;

B. provide medical backup with a licensed physician;

C. have a staff person trained in first aid and CPR on duty at the facility at all times;

D. be state licensed.

E. have the option of providing the following service to parents/guardians of client children or other parents who may benefit from such services:

1. Parent counseling; and
2. Parenting workshops.

3. Have adequate parking as determined by the Planning Commission. In making its determination and at its discretion, the Planning Commission may consider the availability of on-street parking, availability of off-site parking, shared or other alternative parking arrangements, or any other information it deems valid and applicable.

Crosswalk or Walkway. A right-of-way to facilitate pedestrian access through a subdivision block; designed for use by pedestrians and not for use by motor vehicles; may be located within or without a street right-of-way, at grade, or separated from vehicular traffic.

Dairy. A commercial establishment for the manufacture, processing or packaging of dairy products, and their sale; for purposes of this definition, the production of milk on a farm for wholesale marketing off the premises shall not classify the farm as a dairy.

Disability. A physical or mental impairment which substantially limits one or more of a person's major life activities, including a person having a record of such an impairment, or being regarded as having such an impairment. "Disability" does not include current illegal use of, or addition to, any federally controlled substance, as defined in Section 102 of the Controlled Substance Act, 21 U.S.C. 802, or successor law. As used in this definition:

A. "Physical or mental impairment" includes:

1. any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

2. any mental or physiological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

3. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

B. Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

C. "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

D. "Is regarded as having an impairment" means:

1. has a physical or mental impairment that does not substantially limit one or more major life activities but is treated by another person as constituting such a limitation;

2. has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

3. has none of the impairments defined in paragraph A of this definition but is treated by another person as having such an impairment.

Day Care Center (Nonresidential). Any building or structure, other than an occupied residence or a publicly assessable building (church, school, etc.) that is permitted in a single family zoning district, furnishing care, supervision, and guidance for one or more children unaccompanied by parent or guardian for periods of individual care giving for less than 24 hours per day. The term "Day Care Center (Nonresidential)" is inclusive of kindergartens, preschools, child day care, nursery schools, and all other similar facilities specializing in the education and/or care of children prior to their entrance into the first grade, other than facilities owned and/or operated by the public school system.

District. A portion of the territory of the local jurisdiction, established as a zoning district by this Title, within which certain uniform regulations and requirements or various combinations thereof apply under the provisions of this Title; also includes "zone," and "zoning district."

Domestic Staff. Persons employed or residing on the premises of a dwelling or other residential facility to perform domestic services or to assist residents in performing daily life activities.

Driveway. A private roadway, the use of which is limited to persons residing, employed, or otherwise using or visiting the parcel on which the driveway is located.

Dwelling. Any building or portion thereof designed or used as the more or less permanent residence or sleeping place of one or more persons or families, but not including a tent, recreational coach, hotel, motel, hospital, or nursing home.

Dwelling, Farm or Ranch Housing. Dwelling units constructed to provide housing for migratory or temporary farm workers; or for persons permanently working on a farm or ranch.

Dwelling, Mobile Home. See "Mobile Home."

Dwelling, Single-family. A building arranged or designed to be occupied by one (1) family, the structure having only one (1) dwelling unit.

Dwelling, Two-family. A building arranged or designed to be occupied by two (2) families, the structure having only two (2) dwelling units.

Dwelling, Three-family. A building arranged or designed to be occupied by three (3) families, the structure having only three (3) dwelling units.

Dwelling, Four-family. A building arranged or designed to be occupied by four (4) families, the structure having only four (4) dwelling units.

Dwelling, Multiple-family. A building arranged or designed to be occupied by more than four (4) families, and having more than four (4) dwelling units.

Dwelling Group. A group of two (2) or more detached buildings used as dwellings, located on a lot or parcel of land.

Dwelling Unit. One or more rooms in a dwelling, apartment hotel or apartment motel, designed for or occupied by one (1) family for living or sleeping purposes and having one (1) but not more than one (1) kitchen or set of fixed cooking facilities, other than hot plates or other portable cooking units.

Easement. That portion of a lot or lots reserved for present or future use by a person or agency other than the legal owner(s) of said property(ies). The easement may be for use under, on, or above said lot or lots.

Educational Institution. A public elementary or secondary school, seminary, parochial school or private education institution having a curriculum similar to that ordinarily provided in grades one through twelve in a public school system. The term educational institution for the purpose of this Title does not include post high school educational facilities or educational facilities which include residential facilities for its students.

Educational Institution with Housing. A public or private educational institution with on-site residential facilities for its students and/or staff.

Elderly Person. A person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.

Essential Facilities. Utilities or sanitary and public safety facilities provided by a public utility or other governmental agency for overhead or surface or underground services, excluding any building, electrical substation or transmission line of fifty (50) KV or greater capacity, except by conditional use permit.

Family. An individual, or two (2) or more persons related by blood, marriage, or adoption, or a group of not more than four (4) persons (excluding servants) who are not related, living in a dwelling unit as a single housekeeping unit and using common cooking facilities. "Family" does not exclude the care of foster children.

Family Food Production. The keeping of domestic animals and fowl for the production of food for the sole use of the family occupying the premises.

Flood Hazard. A hazard to land or improvements due to inundation or overflow water having sufficient velocity to transport or deposit debris, scour the surface soil, dislodge or damage buildings, or erode the banks of water courses.

Floor Area. Area included within surrounding walls of a building or portion thereof, exclusive of vents, shafts, and courts.

Fraternity or Sorority House. A building occupied by and maintained exclusively for students affiliated with an academic or professional college or university or other recognized institution of higher learning, who are associated together in a fraternity/sorority that is officially recognized by such institution and who receive lodging and/or meals on the premises for compensation.

Forest Industry. An industry which uses forest products, such as sawmill, pulp or paper plant, wood products plant, and similar uses.

Frontage, Block. All property fronting on one (1) side of the street between intersecting or intercepting streets, or between a street and a right-of-way, waterway, end of dead-end street, or political subdivision boundary, measured along the street line. An intercepting street shall determine only the boundary of the frontage on the side of the street which it intercepts or that common line between a lot and a public street.

Frontage, Lot. The lineal measurement of the front lot line.

Garage, Private. A detached accessory building, or a portion of a main building, used or intended to be used for the storage of motor vehicles, recreational coaches, boats, or other recreational vehicles, but not including the parking or storage of trucks or vans having a capacity in excess of one and one-half (1-1/2) tons, and not including space for more than a total of four (4) such vehicles for each dwelling unit on the premises, except that not more than two (2) snowmobiles may be stored in addition to the number of other vehicles herein permitted.

Garage, Repair. A structure or portion thereof, other than a private garage, used for the repair of self-propelled vehicles, trailers, or boats, including general repair, rebuilding or reconditioning of engines, motor vehicles, recreational coaches, and minor collision service, but not including major body, frame or fender repairs or overall automobile or truck painting, except by conditional use permit. A repair garage may also include incidental storage, care, washing, or sale of automobiles.

Geological Hazard. A hazard inherent in the crust of the earth, or artificially created, which is dangerous or potentially dangerous to life, property, or improvements, due to the movement, failure, or shifting of the earth.

Grade. Means the following:

- A. For buildings adjoining one (1) street only, the elevation of the sidewalk at the center of the wall adjoining the street.
- B. For buildings adjoining more than one (1) street, the average of the elevations of the sidewalk at the centers of all walls adjoining the streets.
- C. For buildings having no wall adjoining the street, the average level of the finished surface of the ground adjacent to the centers of all exterior walls of the building.
- D. Any wall parallel or nearly parallel to and not more than five (5) feet from a street line is to be considered as adjoining the street.

Governing Body. The elected legislative body of Brigham City

Homeless Shelter. Charitable lodging or sleeping rooms provided on a daily or other temporary basis to persons lacking other safe, sanitary or affordable shelter. May also include a kitchen and cafeteria.

Home Occupation. The use of a portion of a dwelling customarily used for dwelling purposes, or an attached or detached garage, accessory structure, or yard space as an office, studio, teaching or work room for occupations which are conducted in the home, or an attached or detached garage, accessory structure, or yard space and which is clearly incidental and accessory to the primary use of the dwelling or the attached or detached garage, accessory structure, or yard space and which also meets all the conditions and requirements of Chapter 20 of this Ordinance.

Hospital. An institution licensed by the State of Utah which provides diagnostic, therapeutic, and rehabilitative services to individuals on both an inpatient and outpatient basis by or under the supervision of one or more physicians. Any medical clinic or professional office which offers any inpatient or overnight care, or operates on a twenty-four hour basis shall be considered to be a hospital. A hospital may include integral support service facilities such as laboratories, outpatient units and training and central services, together with staff offices necessary to the operation of the hospital.

Hotel. A building designed for or occupied as the more or less temporary abiding place of sixteen (16) or more individuals who are, for compensation, lodged, with or without meals.

Household Pets. Animals ordinarily permitted in Utah residences and kept for the company or pleasure of Utah residents, such as domesticated dogs, domesticated cats, and domesticated birds. Household pets also include tropical fish, amphibians, reptiles, or invertebrates of a number that do not constitute a health hazard or nuisance, and can be safely and humanely kept in aquariums, cages, or enclosures, the cumulative size of which shall not exceed fifty (50) cubic feet per household. Household pets shall not include a sufficient number of dogs as to constitute a kennel, nor sufficient cats as to constitute a cattery, nor more than six birds. Household pets shall not include the keeping of "dangerous animals," "vicious animals," "wild animals," or "livestock," as defined in Title 4 of the Brigham City Code. Furthermore, household pets shall not include exotic, pygmy, or dwarf variations of animals defined as either "wild animals" or "livestock" in Title 4 of the Brigham City Code, including but not limited to miniature horses, pygmy goats, and Vietnamese pot-bellied pigs, notwithstanding that such animals may be kept as household pets by residents of other communities.

Inundation. Ponded water or water in motion of sufficient depth or velocity to damage property, due to the presence of the water or to the deposit of silt.

Jail. A facility established and operated by the County, either directly or under a contract with a private provider, for confinement of persons in lawful custody.

Junk. Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris or other waste or salvage materials; dismantled, junked, or wrecked automobiles or parts thereof; and old or scrap ferrous or non-ferrous metal materials.

Junk Yard. The use of any lot, portion of a lot, or tract of land for the storage, keeping or abandonment of junk, including scrap metals or other scrap material, or for the dismantling, demolition or abandonment of automobiles, or other vehicles, or machinery or parts thereof; provided that this definition shall be deemed not to include such uses which are clearly accessory and incidental to any agricultural use permitted in the district.

Juvenile Detention Facility. A facility established and operated by the State of Utah, either directly or under a contract with a private provider, for temporary detention of delinquent juveniles.

Juvenile Secure Facility. A facility established and operated by the State of Utah, either directly or under a contract with a private provider, for incarceration of delinquent juveniles.

Kennel, Commercial. Means any place where three (3) or more dogs older than six (6) months are kept for the primary purpose of sale or for the boarding, care, or breeding of which a fee is charged or paid.

Kennel, Sportsman. Means a private kennel for three (3) to five (5) dogs for noncommercial use, which is located on a lot of least one acre.

Land Use Application. Means an application required by Brigham City's Land Use Ordinances.

Land Use Authority. Means a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application.

Land Use Ordinance. Means a planning, zoning, development, or subdivision ordinance of the municipality, but does not include the general plan.

Land Use Permit. Means a permit issued by a land use authority.

Legislative Body. Means the Brigham City Council.

Licensed Family Group Child Care Provider. A child care provider who cares for nine (9) to sixteen (16) children unrelated to the licensee for less than 24 hours a day with a regularly scheduled, ongoing enrollment, for direct or indirect compensation in the provider's home, and who meets all standards and requirements of the State of Utah's rules for Licensed Family Child Care. Licensed Family Group Child Care shall be a Home Occupation subject to the approval of requirements of Chapter 29.20. Licensed Family Group Child Care providers shall obtain conditional use approval, approval of the State of Utah and a business license prior to operation. A conditional use approval for Licensed Family Group Child Care shall be issued to the applicant and shall expire upon lapsing of a business license or State of Utah license, or at such time that the applicant is no longer residing at the address at which approval is granted.

Livestock. Any normally domesticated animal that is ordinarily kept on a farm, such as cattle, swine, sheep, goats, mules, burros, horses, geese, ducks, turkeys, llamas, etc.

Local Governing Body. See Governing Body.

Local Health Officer. The health officer or department employed by the Bear River Health Department.

Local Jurisdiction. Brigham City, Utah.

City Planner. The planner employed by or officially representing Brigham City.

Lot. A parcel or unit of land described by metes and bounds and held or intended to be held in separate lease or ownership, or a parcel or unit of land shown as a lot or parcel on a recorded subdivision map, or shown on a plat used in the lease or sale or offer of lease or sale of land resulting from the division of a larger tract into three (3) or more smaller units.

Lot, Corner. A lot abutting upon two (2) or more streets at their intersection or upon two parts of the same street, such streets or parts of the same street forming an interior angle of less than one hundred thirty-five degrees.

Lot Depth. The horizontal distance between the front and the rear lot lines measured in the main direction of the side lot lines.

Lot, Interior. A lot other than a corner lot.

Lot Frontage Required. The length of the front lot line, which is coterminous with the front street line.

Lot Lines. The property lines bounding the lot.

Lot Line, Front. For an interior lot, the lot line adjoining the street; for a corner lot or through lot, the lot line adjoining either street, adjacent to the architectural front or main entry. The lot line, front shall be used for address designation.

Lot Line, Rear. Ordinarily, that line of a lot which is opposite and most distant from the front line of the lot. In the case of a triangular or gore-shaped lot, a line ten (10) feet in length within the parcel parallel to and at a maximum distance from the front lot line. In cases where these definitions are not applicable, the building inspector shall designate the rear lot line.

Lot Line, Side. Any lot boundary line not a front or rear lot line. A side lot line separating a lot from another lot or lots is an interior side lot line; a side lot line separating a lot from a street is a street side lot line.

Lot, Restricted. A lot having an average slope of twenty-five (25) per cent or more or which does not contain a buildable area of at least seventy-five (75) feet by one hundred (100) feet with an average slope of less than fifteen (15) per cent, such lot being prohibited as a building site, or being required to be increased in area and width, and regulated and allowed to be developed only as required by the planning commission.

Lot Right-of-way. A strip of land of not less than sixteen (16) feet in width connecting a lot to a street for use as private access to that lot.

Lot Width. The horizontal distance between the side lot lines, measured at the required front yard setback line or rear yard setback line, whichever is shorter.

Lot, Unrestricted. A lot having an average slope of less than twenty-five (25) per cent and containing a buildable area of at least seventy-five (75) feet by one hundred (100) feet with an average slope of less than fifteen (15) per cent, which buildable area is designated as such on the subdivision plat in which the lot is located, if the average slope of the lot is greater than fifteen (15) per cent.

Manufactured Home. A transportable, factory built housing unit constructed on or after June 15, 1976. According to the federal home construction and safety standards act of 1974 (HUD code), in one or more sections, and when erected on site, the home must be at least twenty feet (20') in width at the narrowest dimension, have exterior and roofing materials acceptable to the City building codes, have a minimum roof pitch of two to twelve (2:12), and be located on a permanent foundation and connected to the required utilities, including plumbing, heating, air conditioning and electrical systems. A manufactured home shall be identified as real property on the property assessment rolls of Box Elder County. All manufactured homes constructed on or after June 15, 1976, shall be identified by the manufacturer's data plate bearing the date the unit was



manufactured and a HUD label attached to the exterior of the home certifying the home was manufactured to HUD standards.

Marquee. A permanent roof-like structure or canopy of rigid materials supported by and extending from the facade of a building.

Mobile Home. A detached, single-family dwelling unit of not less than thirty (30) feet in length, designed for long-term occupancy, and to be transported on its own wheels or on flatbed or other trailers or detachable wheels; containing a flush toilet, sleeping accommodations, a tub or a shower bath, kitchen facilities, and plumbing and electrical connections provided for except for connections to utilities and other minor work. Pre-sectionalized, modular, or prefabricated houses not placed on a permanent foundation shall be regarded as mobile homes; if placed upon a permanent foundation, such structures which meet all applicable building and housing codes shall not be considered as mobile homes, but shall be regulated as conventional housing; and mobile homes which are placed on permanent foundations and meet all applicable building and housing codes shall be regulated as conventional housing.

Mobile Home Lot. A lot within a mobile home subdivision, designed and to be used for the accommodation of one (1) mobile home.

Mobile Home Park. A space designed and approved by the local jurisdiction for occupancy by mobile homes, to be under a single ownership or management, and meeting all requirements of the zoning title and mobile home park title for mobile home parks.

Mobile Home Space. A space within a mobile home park, designed and to be used for the accommodation of one (1) mobile home.

Mobile Home Stand. That part of the mobile home space which has been reserved for the placement of the mobile home and its appurtenant structures or additions.

Mobile Home Subdivision. A subdivision designed and intended for residential use where the lots are to be individually owned or leased, and occupied by mobile homes exclusively.

Modular Home. A permanent dwelling structure built in prefabricated units, which are assembled and erected on the site, or at another location and brought as a unit to the site; said modular home is classed as a mobile home until it is placed on a permanent foundation and complies with all governing building codes.

Motel. A building or group of buildings for the drive-in accommodation of transient guests, comprising individual sleeping or living units, and designed and located to serve the motoring public.

Non-complying Building or Structure. Means a structure that:

- A. Legally existed before its current land use designation; and
- B. Because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations, which govern the use of land.

Non-conforming Use. Means a use of land that:

- A. Legally existed before its current land use designation;
- B. Has been maintained continuously since the time the land use ordinance governing the land changed; and
- C. Because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

Nursing Home. An intermediate care/nursing facility or a skilled nursing facility, licensed by the State of Utah, for the care of individuals who, due to illness, advanced age, disability, or impairment, require assistance and/or supervision on a twenty-four (24) hour per day basis. Such facility does not include an adult day care facility or adult day care provided in conjunction with a residential facility for elderly persons or a residential facility for persons with a disability.

Official Map. Means a map or maps which has been adopted as the official map of the local jurisdiction, showing existing public streets, streets on plats of subdivisions which have been approved by the planning commission, and/or other street extensions, widening, narrowing, or vacations which have been accurately surveyed and definitely located.

Off-street Parking Space. The space required to park one (1) passenger vehicle, which space shall meet the requirements of this Title.

Off-site Facilities. Improvements not on individual lots but generally within the boundaries of the subdivision which they serve, and as further outlined in this Title.

On-site Facilities. Construction or placement of the dwelling and its appurtenant improvements on a lot.

Open Space. The area reserved in parks, courts, playgrounds, golf courses, and other similar open areas to meet the density requirements of planned unit developments.

Open Space, Usable. Usable open space shall be any portion of a lot or building which meets all the following conditions:

- A. The space shall be open to the sky or shall be open to view on at least two sides.
- B. The space shall be readily accessible by foot traffic from the dwelling unit to which it is accessory.

C. The space is provided on a balcony, roof, or other facility above grade, it shall have such protective devices as are deemed necessary by the zoning administrator to assure reasonably safe usage by children and adults.

D. The space shall not be provided from any required front or side yard, parking area, or driveway space.

Owner. The holder of the fee title to land or buildings or to property, whether a person, partnership, corporation, or other entity recognized by law, and his or its lessees, permittees, assignees, or successors in interest.

Package Agency. Any outlet authorized by the Utah Liquor Control Commission to sell original packaged liquor or wine for consumption off the premises.

Parapet. The extension of a false front or wall above a roofline.

Parcel of Land. See "Lot."

Parking Lot. An open area, other than a street, used for the parking of more than four (4) automobiles and available for public use, whether free, for compensation, or accommodation for clients or customers.

Pedestrian-way. See "Crosswalk."

Permanent Cosmetics. A mark or design made on or under the skin by a process of pricking or ingraining an indelible pigment, dye or ink in the skin for masking discolorations or cosmetically enhancing facial features which shall follow the natural line of the feature and shall be limited to eyeliner, eyebrows or lip coloring procedures only.

Planned District. A zoning district, the boundaries of which are to be shown on the zoning map, but the regulations for which shall be determined by a general development plan to be adopted by the governing body as part of the zoning title, after public hearing, as required for other zoning districts.

Planned Unit Development (PUD). An integrated design for development of residential, commercial or industrial uses, or limited combinations of such uses, in which the density and location regulations of the district in which the development is situated may be varied or waived to allow flexibility and initiative in site and building design and location, in accordance with an approved plan and imposed requirements.

Plot Plan. A plat of a lot, drawn to scale, showing its actual measurements, the size and location of any existing buildings or buildings to be erected, the location of the lot in relation to abutting streets, and such other information as may be required by the planning commission.

Prison. A facility for incarceration of persons convicted of crimes, established and operated by the State of Utah or by a private provider pursuant to the provisions of the Private Correctional Facilities Act, Chapter 13c, Title 64, Utah Code Annotated, as amended.

Private Nonprofit Locker Club. A social, recreational, or athletic club, or kindred association, incorporated under the provisions of the Utah Nonprofit Corporation and Cooperation Act, which maintains or intends to maintain premises upon which liquor is or will be stored, consumed, or sold.

Private Nonprofit Recreational Grounds and Facilities. Nonprofit recreational grounds and facilities operated by a nonprofit corporation, association, or group.

Protective Housing Facility. A facility operated, licensed or contracted by a governmental entity, or operated by a charitable, nonprofit organization, where, for no compensation, temporary, protective housing is provided to:

- A. abused or neglected children awaiting placement in foster care;
- B. pregnant or parenting teens;
- C. victims of sexual abuse; or
- D. victims of domestic abuse.

Reasonable Accommodation. A change in a rule, policy, practice, or service necessary to afford a person equal opportunity to use and enjoy a dwelling. As used in this definition:

A. "Reasonable" means a requested accommodation will not undermine the legitimate purposes of existing zoning regulations notwithstanding the benefit that the accommodation would provide to the person with a disability.

B. "Necessary" means the applicant must show that, but for the accommodation, one or more persons with a disability likely will be denied an equal opportunity to enjoy housing of their choice.

C. "Equal opportunity" means achieving equal results as between a person with a disability and a non-disabled person.

Recreational Coach. A vehicle, such as a travel trailer, tent camper, camp car or other vehicle with or without motive power, designed and/or constructed to travel on the public thoroughfare in accordance with the provisions of the Utah Vehicle Code, and designed for use as human habitation for a temporary and recreational nature.

Recreational Coach Park. Any area or tract of land or a separate designated section within a mobile home park where lots are rented or held out for rent to one or more owners or users of recreational coaches for a temporary time not to exceed thirty (30) days. Such park may also be designated as "Overnight Park."

Recreational Coach Space. A plot of ground within a recreational coach park designated and intended for the accommodation of one (1) recreational coach.

Rehabilitation/Treatment Facility. A facility licensed by or contracted by the State of Utah to provide temporary occupancy and supervision of adults or juveniles in order to provide rehabilitation, treatment, or counseling services. Without limitation, such services may include rehabilitation, treatment, counseling, or assessment and evaluation services related to delinquent behavior, alcohol and drug abuse, sex offenders, sexual abuse, or mental health. Associated education services may also be provided to juvenile occupants. A Rehabilitation/Treatment Facility does not include a residential facility for persons with a disability.

Residence. A place where an individual is actually living at a given point in time and not a place of temporary sojourn or transient visit.

Residential Certificate Child Care Provider. Means a child care provider who cares for one (1) to eight(8) children in the provider's home, having a regular scheduled, ongoing enrollment, for direct or indirect compensation. A residential certificate child care provider may not care for more than eight children including the provider's own children under age four. The provider also may not care for more than two children under age two, including the owner's own children under age two. Residential certificate child care is a home occupation subject to the approval requirements of Chapter 29.20. A residential certificate child care provider shall be required to obtain approval of the State of Utah, if required by the State of Utah, and a business license prior to operation. Home occupation approval for Residential Certificate Child Care shall be issued to the applicant and shall expire upon lapsing of a business license or State of Utah license, or at such time that the applicant is not longer residing at the address at which approval is granted.

Residential Facility for Elderly Persons. Means a dwelling unit owned by a resident thereof or an immediate family member of a resident, or for which the title has been placed in trust for a resident; and is voluntarily occupied on a twenty-four (24) hour per day basis by eight (8) or fewer elderly persons in a family-type arrangement. A "residential facility for elderly persons" does not include any facility:

A. operated as a business; provided that such facility shall not be considered to be operated as a business solely because a fee is charged for food or for actual and necessary costs of operation and maintenance of the facility;

B. where persons are placed:

1. for alcoholism or drug abuse treatment; or

2. as part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional facility;

C. which is a health care facility as defined by Section 26-21-2 of the Utah Code, as amended, or

D. which is a residential facility for persons with a disability.

Residential Facility for Persons with a Disability. Means a dwelling unit or other place in which more than one person with a disability resides and, if required by State law, is licensed or certified by:

A. the Utah Department of Human Services under Title 62A, Chapter 2, of the Utah Code, Licensure of Program and Facilities, or

B. the Department of Health under Title 26, Chapter 21, of the Utah Code, Health Care Facility Licensing and Inspection Act.

School, Charter. Means a school approved by a chartering entity in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act.

School, Private. Means a school which is operated by a quasi-public or private group, individual, or organization, and which has a curriculum similar to that provided in any public school in the state of Utah. Private schools may be nonprofit, or profit-making establishments.

School, Public. Means a school operated by a school district or other public agency in the state of Utah.

Self-Service Storage Facility. Means a structure, or structures, containing separate, individual and private storage spaces of varying sizes leased or rented on individual leases for varying periods of time. Such facilities are to be used for dead storage only. The following activities are prohibited within any self-storage service facility:

A. Commercial, wholesale or retail sales, or miscellaneous or garage sales.

B. The servicing, repair or fabrication of motor vehicles, boats, trailers, small engine equipment, or similar equipment.

C. The operation of power tools, spray painting equipment, compressors, welding equipment, kilns, or similar equipment.

D. The establishment of a transfer business.

E. Any use that is noxious or offensive because of odors, dust, noise or vibrations.

Sexually-Oriented Business. Those land uses subject to regulation under Chapter 14.19 of the Brigham City Code

Sheltered Workshop. A nonresidential facility providing supervised educational or vocational training facilities for persons with a disability.

Site Plan. A plan required by, and providing the information required by, Section 11-2 herein.

Stable, Private. A detached accessory building for the keeping of horses owned by the occupants of the premises and not kept for hire, remuneration, or sale.

Stable, Public. Any stable where horses are boarded and/or kept for hire.

State Store. An outlet for the sale of liquor located on the premises, said premises owned or leased by the State of Utah.

Story, Half. A partial story under a gable, hip, or gambrel roof, the wall plates of which on at least two (2) opposite exterior walls do not extend more than four (4) feet above the floor of such story, and the ceiling area of which does not exceed two-thirds (2/3) of the floor area of the same half story.

Structure. Anything constructed, the use of which requires fixed location on the ground, or attachment to something having a fixed location upon the ground; includes "building."

Subdivision, Cluster. A subdivision of land in which the lots have areas less than the minimum lot area of the district in which the subdivision is located, but which complies with the cluster subdivision provisions of this Title and in which a significant part of the land is privately reserved or dedicated as permanent common open space to provide low-density character for the residential lots in the subdivision.

Support Staff. Persons employed or residing on the premises of a dwelling or other residential facility to assist residents in performing daily life activities or to provide on-site treatment, rehabilitation, or habilitation services.

Tattoo. A mark or design made on or under the skin by a process of pricking or ingraining an indelible pigment, dye or ink in the skin, excluding permanent cosmetics.

Tattoo Establishment. Any location, place, area, structure or business used for the practice of tattooing or the instruction of tattooing, excluding permanent cosmetics establishments.

Trade or Vocational School. A post-high school educational or vocational training facility.

Transitional Housing Facility. A facility owned, operated or contracted by a governmental entity or a charitable, nonprofit organization which provides free temporary housing to homeless persons for at least thirty (30) days while they obtain work, job skills, or otherwise take steps to stabilize their circumstances. A transitional housing facility does not include:

A. a homeless shelter;

B. a dwelling unit provided to a family for its exclusive use as part of a transitional housing program for more than thirty (30) days; or

C. a residential facility for persons with a disability.

Vicinity Plan. A map or drawing, to scale, showing the physical relationships of the proposed development to existing or proposed streets, buildings and utilities; other relevant information such as special terrain or surface drainage, and existing zoning classifications of all land within three hundred (300) feet of the property proposed for development.

Yard. A required open space on a lot, other than a court, unoccupied and unobstructed from the ground upward, except as permitted elsewhere in this Title.

Yard, Front. A space on the same lot with a building, between the front line of the building and the front lot line, and extending across the full width of the lot. The "depth" of the front yard is the minimum distance between the front lot line and the front line of the building.

Yard, Rear. A space on the same lot with a building, between the rear line of the building and the rear lot line, and extending the full width of the lot. The "depth" of the rear yard is the minimum distance between the rear lot line and the rear line of the building.

Yard, Side. A space on the same lot with a building, between the side line of the building, and the side lot line and extending from the front yard to the rear yard. The "width" of the side yard shall be the minimum distance between the side lot line and the side line of the building.

Zone. See "District."

Zoning Ordinance. The Zoning Ordinance is Land Use Ordinance of Brigham City.

## **Chapter 29.02. Board Of Adjustment.<sup>2</sup>**

### **29.02.010. Board Membership.**

~~————The Board of Adjustment shall consist of five members and whatever number of alternate members that the Mayor considers appropriate, each to be appointed by the Mayor for the term of five years, provided that the term of one member shall expire each year. Any member or alternate member may be removed for cause by the appointing authority upon written charges and after a public hearing if such public hearing is requested. Vacancy shall be filled for the unexpired term of any member or alternate member whose term becomes vacant. One member, but not more than one of the Planning Commission, shall be a member of the Board of Adjustment.~~

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<sup>2</sup> This entire Chapter was amended with Ordinance No. 01-42, dated 11/15/01

#### **29.02.020. Organization and Meetings of Board:**

~~A. The Board shall adopt bylaws for the regulation of its procedure and the conduct of its duties not inconsistent with the provisions of this title or of the Utah Code. Such bylaws, to become effective, shall first be approved by the City Council.~~

~~B. Decisions of the Board shall become effective at the meeting in which the decision is made, unless a different time is designated in the Board's rules.~~

#### **29.02.030. Duties and Powers of the Board:**

~~The Board of Adjustment shall have the following powers:~~

~~A. Appeals – Hear and decide appeals from any order, requirement, determination or decision of the Planning Commission and/or Zoning Administrator's application of the zoning ordinance. An appeal may not be used to waive or modify the terms or requirements of the zoning ordinance.~~

~~B. Special Exceptions – Hear and decide special exceptions to the terms of the zoning ordinance where the City Council has granted jurisdiction to the Board to do so. The Board may hear and decide special exceptions only if authorized to do so by the zoning ordinance and based only upon the standards contained in the zoning ordinance.~~

~~C. Variances – Hear and decide all applications for variance from the terms of the zoning ordinance other than allowing a use variance. Such decisions shall be made in accordance with State law, Section 29.02.060 of this Chapter, and the rules adopted by the Board.~~

~~D. Nonconforming Use – Hear and make determinations regarding the existence, expansion, or modification of nonconforming uses.~~

#### **29.02.040. Zoning Administrator's Determinations:**

~~The Zoning Administrator may decide certain matters as designated by the Board, and consistent with guidelines established by this Chapter, the Utah Code, and the rules adopted by the Board. Pursuant to this authority, the Zoning Administrator may decide all cases which are routine in nature, uncontested, do not impact on the character of the neighborhood, are primarily brought about by recent changes in the Zoning Ordinance creating a large number of nonconforming structures or uses, and which the Board has granted on an almost routine basis. The specific types of decisions the Zoning Administrator is authorized to make shall include:~~

~~A. Determination of a nonconforming use which can be verified by substantial evidence. Substantial evidence, for the purpose of this Section, shall mean official documents, including any written correspondence, receipts, permits, or documents issued by a public body or agency thereof, etc., that may establish the truth of the matter asserted by the applicant.~~

~~B. Consider additions or alterations to existing buildings and structures which are nonconforming as to height, area, or yard regulations provided the addition follows the existing wall lines and no additional dwelling units are added to the building or structure.~~

~~C. Change in status of a nonconforming use to an equally intensive or a less intense use than that immediately preceding the proposed use.~~

~~D. Final review and approval on plans where the Board has required that a final plan be submitted for special approval, showing that all the requirements imposed by the Board in granting the original approval have been complied with. All decisions of the Zoning Administrator made under this section may be appealed to the Board.~~

#### **29.02.050. Appeals to the Board of Adjustment:**

~~Appeals may be made to the Board of Adjustment by the City, the applicant, or any other person or entity adversely affected by a zoning decision administering or interpreting a zoning ordinance. All appeals shall be made as follows:~~

~~A. The appeal shall be made within ten days 30 days of the action or decision being appealed from by filing a notice of appeal with the Board of Adjustment with the Planning and Zoning Department. *Community Development Department*.<sup>3</sup>~~

~~B. The notice of appeal shall specify the grounds for the appeal and circumstances related thereto. The notice shall allege that there was error in the order, requirement, decision, or determination made by an official or officials in the administration or interpretation of the zoning ordinance. A notice failing to allege such error or specifying the grounds for appeal may be summarily dismissed by the Board of Adjustment with or without prejudice. Response to the above requirements shall be set forth in detail in the notice of appeal. The person or entity making the appeal shall have the burden of proving that an error has been made.~~

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<sup>3</sup> Ordinance No. 04-14, dated 5/20/04.

~~\_\_\_\_\_ C. All papers constituting the record upon which the action appealed from was made shall be transmitted to the Board of Adjustment.~~

~~\_\_\_\_\_ D. The Board of Adjustment shall set the appeal for hearing to be held within a reasonable time from the date the appeal is received. Written notice of the date set for hearing the appeal shall be mailed to the applicant at least seven days before the appeal hearing date. After hearing the appeal, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer or body from which the appeal is made.~~

~~\_\_\_\_\_ E. The filing of an appeal shall stay all proceedings and actions in furtherance of the matter appealed, pending a decision of the Board of Adjustment. Said stay shall exist unless the Planning Commission or Zoning Administrator certifies to the Board of Adjustment, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate, the stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by restraining order which may be granted by the District Court on application, notice, and due cause shown.~~

~~\_\_\_\_\_ F. The concurring vote of three members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, planning commission, or agency, or to decide in favor of the appellant.~~

~~\_\_\_\_\_ G. The City, or any person adversely affected by any decision of the Board, may petition the district court for a review of the decision, provided the petition is filed with the Court within 30 days after the Board's decision is final. In the petition, the appealing party may only allege that the Board's decision was arbitrary, capricious, or illegal. The Board may, after finding that it is in the best interest of the City to do so, stay its decision pending district court review.~~

#### **29.02.060. Variances:**

~~\_\_\_\_\_ A. Definitions. A variance is a device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape, or topographical conditions of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to reduce financial difficulties.~~

~~\_\_\_\_\_ B. Variance Criteria. Unless otherwise provided in this Title, the Board may grant a variance from the requirements of any provision of the zoning ordinance to the extent that such a grant shall be consistent with the provisions of this Section. Notwithstanding, the spirit of this Title must be observed and substantial justice done. Further, a previous variance can never set a precedent. Each case must be considered only on its individual merits:~~

- ~~\_\_\_\_\_ 1. The Board may grant a variance only if:~~
  - ~~\_\_\_\_\_ a. literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance; and~~
  - ~~\_\_\_\_\_ b. there are special circumstances attached to the property that do not generally apply to other properties in the same zoning district; and~~
  - ~~\_\_\_\_\_ c. granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district; and~~
  - ~~\_\_\_\_\_ d. the granting of the variance will not substantially affect the general plan and will not be contrary to the public interest; and~~
  - ~~\_\_\_\_\_ e. the spirit of the zoning ordinance is observed and substantial justice done.~~

~~\_\_\_\_\_ 2. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under this section, the Board may not find an unreasonable hardship unless the alleged hardship:~~

- ~~\_\_\_\_\_ a. is located on or associated with the property for which the variance is sought; and~~
- ~~\_\_\_\_\_ b. comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.~~

~~\_\_\_\_\_ 3. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under this section, the Board may not find unreasonable hardship if the hardship is self-imposed or economic.~~

~~\_\_\_\_\_ 4. In determining whether or not there are special circumstances attached to the property under this section, the Board may find that special circumstances exist only if the special circumstances:~~

- ~~\_\_\_\_\_ a. relate to the hardship complained of; and~~
- ~~\_\_\_\_\_ b. deprive the property of privileges granted to other properties in the same district.~~

~~\_\_\_\_\_ 5. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.~~

~~\_\_\_\_\_ 6. Variances, once granted, shall run with the land.~~

~~\_\_\_\_\_ 7. Use variances may not be granted by the Board nor by any other body.~~

~~\_\_\_\_\_ 8. In granting a variance, the Board may impose additional requirements on the applicant that will:~~  
~~\_\_\_\_\_ a. mitigate any harmful effects of the variance; or~~  
~~\_\_\_\_\_ b. serve the same or similar purpose of the standard or requirement that is waived or modified.~~